

Child Abuse Prevention and Treatment Act: Reauthorization Proposals in the 107th Congress

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The Child Abuse Prevention and Treatment Act (CAPTA) expired at the end of FY2001. In 2002 legislation to reauthorize CAPTA passed the House and the Senate Health, Education, Labor and Pensions Committee also approved CAPTA reauthorizing legislation. However no action was taken by the full Senate on CAPTA reauthorization before adjournment of the 107th Congress and each of the CAPTA reauthorizations proposals (H.R. 3839, H.R. 5601, and S. 2998) died with the close of that Congress. Despite expiration of its funding authorization, Congress provided FY2002 funding (\$81.6 million) for the various programs authorized by CAPTA and FY2003 funding is available at this same level under the continuing resolution (P.L. 107-294).

First enacted in 1974, CAPTA was intended to create a focal point in the federal government to identify and address issues of child abuse and neglect, and to support effective methods of prevention and treatment. The Act was most recently reauthorized in 1996 and authorizes grants to states to help with their child protective service functions, funding for research and demonstration projects related to child abuse and neglect, grants to states to improve investigation and prosecution of child maltreatment, and grants for community-based family resource and support services. The Act also authorizes the Department of Health and Human Services (HHS) to operate a national clearinghouse of information related to abuse and neglect, and requires states to submit certain data to HHS.

The national incidence of state-reported child abuse and neglect declined from 1993 through 1999 but rose slightly in 2000. For that year an estimated 2.8 million reports of abuse and neglect were made and some 879,000 children were found to be victims. Child abuse and neglect victims may experience one or more kinds of maltreatment including neglect, physical abuse, sexual abuse, psychological or other maltreatment. Neglect is the most common form of child maltreatment and in 2000 close to 63% of the 879,000 victims suffered neglect (including medical neglect).

This report describes the current structure of CAPTA along with three proposals to reauthorize CAPTA that were debated in the 107th Congress (H.R. 3839, S. 2998, and H.R. 5601). Each, or most, of these bills also sought to amend the Adoption Opportunities program, Abandoned Infants Assistance and the Family Violence Prevention and Services Act; discussion of those programs and proposed changes are also included. This report will not be updated.

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Child Abuse Prevention and Treatment Act: Reauthorization Proposals in the 107th Congress

Most Recent Developments

The 107th Congress closed without completing efforts to reauthorize the Child Abuse Prevention and Treatment Act (CAPTA). CAPTA expired in FY2001 but Congress appropriated \$81.6 million to continue the program in FY2002 (P.L. 107-116); FY2003 funding at this same level is now available under the continuing resolution (P.L. 107-294). The President's FY2003 budget requested \$81.8 million for CAPTA programs. The Senate Appropriations Committee matched that request in the Labor, Health and Human Services and Education Appropriations Act (S. 2766) it approved in July 2002, however this bill expired with the close of the 107th Congress.

During the second session of the 107th Congress legislation to reauthorize CAPTA was introduced in both chambers. In April the House of Representatives passed (under suspension of the rules) the Keeping Children and Families Safe Act of 2002 (H.R. 3839) and the Senate Health, Education, Labor and Pensions Committee approved its version of CAPTA reauthorization legislation (S. 2998) in September. Subsequent efforts to reach full agreement on a compromise bill prior to conference were not successful. However, on October 10, 2002 the House (under unanimous consent) passed a revised Keeping Children and Families Safe Act (H.R. 5601) which incorporated some of the Senate Committee-proposed changes.

All three bills sought to amend the Child Abuse Prevention and Treatment Act (CAPTA), increase the funding authorization for its existing grant programs, and extend their authority through FY2007. S. 2998 also sought to authorize new funding for demonstration grants to improve the short and long-term financial security of children in foster care and those leaving care due to their age. All three bills would additionally have reauthorized (through FY2007) two related and also expired programs, Adoption Opportunities and Abandoned Infants Assistance. Finally, H.R.3839 and S. 2998 proposed to amend and extend the authority of certain programs (through FY2007) under the Family Violence and Prevention Services Act and S. 2998 sought to add under this Act new authority for the enhancement of the National Domestic Violence Hotline and to provide services for children who witness domestic violence. No amendments to the Family Violence and Prevention Services Act were included in H.R. 5601.

Introduction

Created in 1974, CAPTA was intended to establish a focal point in the federal government to identify and address issues of child abuse and neglect, and to support effective methods of prevention and treatment. As a result of CAPTA, all states now have mandatory child maltreatment reporting laws and investigation procedures. CAPTA has been amended and extended several times since its inception, most recently in 1996. CAPTA authorizes grants to states to help with their child protective service functions, funding for research and demonstration projects related to child abuse and neglect, grants for state and local networks of community-based family resource and support services to prevent child abuse and neglect, and grants to improve states' investigation and prosecution of child maltreatment (Children's Justice Act Grants).¹ CAPTA additionally authorizes the Department of Health and Human Services (HHS) to operate a national clearinghouse of information related to child abuse and neglect and requires HHS to compile and make available state-reported child maltreatment data.

In order to receive state grants, CAPTA requires states to make certain "assurances." Along with basic policies and procedures for reporting and investigating child abuse and neglect (including medical neglect and confidentiality measures), these assurances direct states to develop policies, procedures or laws to allow expedited termination of parental rights in certain cases, expungement of certain records related to unsubstantiated reports of maltreatment, immunity from prosecution for good faith reporters of child maltreatment and appointment of a guardian *ad litem* for every child involved in a judicial proceeding. States are also required to establish citizen review panels to review state and local child protection policies and procedures and to annually submit to HHS certain data on child maltreatment.

Legislative proposals discussed in the 107th Congress would have directed states to comply with several new assurances. H.R. 3839, S. 2998 and H.R. 5601 each sought to address the needs of infants born with drug exposure. H.R. 3839 would have required health care providers, who are involved in delivery of certain drug-exposed infants, to notify Child Protective Services (CPS) of the newborn's condition it also called for procedures to develop a safe plan of care for a drug-exposed infant. Alternatively, S. 2998 would simply have required the states to put in place policies and procedures (including "appropriate" referrals to CPS) to address the needs of drug-exposed infants. HR 5601 generally followed the provision as it was included in the Senate proposal but also required development of a safe plan of care for the infant.

Each of the proposals (H.R. 3839, S. 2998, and H.R. 5601) would additionally have required states to make provisions and procedures for parents (or others) accused of child maltreatment to be informed of the specific allegations against them at their initial contact with CPS workers and for improved training, retention and

¹ Children's Justice Act grants are funded by a set-aside from the Crime Victim's Fund and do not tap general revenues. Administered by the Department of Justice, the Crime Victim's Fund consists of fines collected from individuals who are convicted of federal crimes.

supervision of CPS caseworkers. All three proposals also would have elevated to its own paragraph a subpart of a current law assurance that requires disclosure of confidential information to a federal, state or local government agency where the information is needed to allow that agency to carry out its duty to protect children from abuse and neglect. Both H.R. 3839 and H.R. 5601 additionally included an assurance intended to address training of CPS workers concerning their legal duties (in respect to the rights of both children and parents). H.R. 5601 also included two assurances that were initially proposed in S. 2998. These required criminal background checks for prospective foster and adoptive parents and other adult relatives and non-relatives living in the household and triage procedures for the appropriate referral of a child “not at risk of imminent harm” to community or voluntary preventive services. Finally H.R. 3839 alone called for procedures for referral of any child maltreatment victims under the age of three for services under Part C of the Individuals with Disabilities Education Act.²

Like H.R. 3839 and S. 2998, H.R. 5601 would have reauthorized CAPTA through FY2007 and for programs currently authorized would have increased the total funding authorization to \$200 million. S. 2998 would have provided an additional \$10 million funding authorization for new program authority to provide demonstration grants for services meant to increase the ability of foster care youth and those aging out of foster care to live independently. All three bills would also have extended and increased the funding authorizations for two related independent programs Adoption Opportunities and Abandoned Infants Assistance. Finally H.R. 3839 and S. 2998 would have extended the authorization of various programs under the Family Violence Prevention Services Act (FVPSA). S. 2998 would have provided new program authority under this act for services to children who witness domestic violence and for the enhancement of the National Domestic Violence Hotline. H.R. 5601 did not include provisions concerning FVPSA.

The House Education and the Workforce and the Senate Health, Education, Labor and Pensions (HELP) Committees have jurisdiction over CAPTA’s authorizing legislation and its program’s are administered by HHS.

Recent Data and Trends

According to the most recent data available, an estimated 2.8 million reports of possible child maltreatment were made to child welfare agencies in 2000. More than three-fifths of these reports were investigated and 879,000 children were estimated to have been victims of abuse or neglect – for an incidence rate of 12.2 per 1,000 children. This incidence rate is higher than the 1999 rate of 11.8 but remains below the 1993 recorded highpoint (when more than 1 million children were substantiated as victims, for an incidence rate of 15.3 per 1,000 children.)³

² Part C of the Individuals with Disabilities Education Act (IDEA, P.L. 99-457, as amended) mandates evaluation of state-defined “developmental delay” (physical, mental, and other) of all referred children (under age 3).

³ U.S. Department of Health and Human Services, *Child Maltreatment 2000*, 2002. (continued...)

The long-term trend in child abuse *reporting*, however, has been one of substantial growth, with the number of maltreatment reports more than quadrupling since 1976. Increased reporting does not necessarily mean an equivalent increase in actual abuse or neglect and it is generally agreed that some part of the dramatic growth in reporting over the last two to three decades is due to greater public awareness and recognition of child abuse and neglect, (especially since the 1960s and 1970s when states enacted mandatory reporting laws). Indeed the percentage of child maltreatment reports that are substantiated (a child is found to be a victim) has declined over the past decades.

At the same time, researchers and professionals agree that not all children who are victims of abuse or neglect are reported to child welfare agencies. To gain a more complete picture, Congress has periodically directed HHS to fund the National Incidence Study of Child Abuse and Neglect (NIS). This study collects data on children who have been investigated by child protection agencies, but also includes information from community professionals on children who were either not reported to child welfare agencies or whose cases were not investigated. The NIS was conducted in 1980, 1986, and 1993. According to the most recent NIS survey, more than 1.5 million children were victims of abuse or neglect in 1993 under the “harm” standard (i.e., children who have suffered demonstrable harm by objective measures), for a 67% increase from 1986, and a 149% increase from 1980. The NIS also found that 2.8 million children could be counted in 1993 under the “endangerment” standard (a more subjective measure, including children who were not actually harmed but might be considered at risk), which was almost double the number counted in 1986. The endangerment standard was not used in the 1980 NIS.⁴

Children may experience one or more kinds of maltreatment. Of the child victims in 2000, close to 63% suffered neglect (including medical neglect), while a little more than 19% were physically abused, 10% were sexual abuse victims, and 8% were emotionally or psychologically maltreated. In addition 17% experienced maltreatment that was coded by a state as “other” and might include abandonment, threats of harm to the child, or congenital drug addiction. In 2000, an estimated 1,200 children died due to child abuse and neglect. This number is based on more comprehensive reporting than in previous years although it is still slightly below the peak of 1,240 in 1994.⁵ However, in 1995, the U.S. Advisory Board on Child Abuse and Neglect estimated that 2,000 children under age 18 are actually killed by parents or caretakers each year, and suggested that even this might be a low estimate.⁶

³ (...continued)

Available on the web at [<http://www.acf.dhhs.gov/programs/cb/publications/cmreports.htm>].

⁴ A.J. Sedlak and D.D. Broadhurst, *Third National Incidence Study of Child Abuse and Neglect: Final Report*, Department of Health and Human Services, September 1996.

⁵ U.S. Department of Health and Human Services, *Child Maltreatment 2000*, 2002.

⁶ U.S. Advisory Board on Child Abuse and Neglect, *A Nation's Shame: Fatal Child Abuse and Neglect in the United States*, Washington, DC, 1995.

Current Structure of CAPTA

Federal Discretionary Activities

Federal-Level Entities and Administration. Under Title I, the Secretary of HHS may designate an Office of Child Abuse and Neglect to administer and coordinate activities under CAPTA (Section 101). In practice, this agency is established as a component of the Children's Bureau, within the Administration for Children and Families. Prior to the 1996 amendments, the Secretary was *required* to administer CAPTA through a separate National Center on Child Abuse and Neglect.

The law also allows the Secretary to appoint an Advisory Board on Child Abuse and Neglect (the advisory board was required before the 1996 amendments) to make recommendations on specific issues, including: coordination of child abuse and neglect activities with similar family violence prevention and treatment activities; reducing the number of unfounded and unsubstantiated child abuse and neglect reports while enhancing the ability to identify and substantiate legitimate cases where children are in danger; and coordination of data collection in child protection and child welfare (Section 102). Since issuing its last report in 1995 (cited in footnote 6), the advisory board no longer exists.

Either directly or by contract, HHS must operate a national clearinghouse for information on child abuse and neglect (Section 103). The law specifies the following functions of the clearinghouse: to maintain, coordinate and disseminate information on child abuse and neglect programs and on the incidence of child abuse and neglect. The National Clearinghouse on Child Abuse and Neglect Information maintains a web site [<http://www.calib.com/nccanch/>] where a wide variety of data, program, and legal information can be found.

Also as required by CAPTA, HHS operates the National Child Abuse and Neglect Data System (NCANDS). Since 1996, states are required (to the "maximum extent practicable") to submit data to NCANDS on the findings of child abuse and neglect investigations, response times, services provided, child fatalities, CPS workload, and other related issues. As NCANDS was originally designed states may submit aggregate or case-level data. (The latter allows for richer data analysis.) In 2000, a record 34 states submitted case-level data (compared to just 23 states that did so in 1999), however many states are not yet reporting all of the data items requested by the 1996 legislation.⁷

Research and Demonstration. Title I of CAPTA requires HHS to conduct an interdisciplinary research program to provide information that could improve child

⁷ U.S. Department of Health and Human Services, *Child Maltreatment 2000* (2002). Appendix A lists the required data elements. Table A-1 shows that all but one state was able to provide data on the number of children reported to the state as abused or neglected by the disposition of the case, while just 21 states reported on the time to investigation from initial report, and only 5 reported on the average number of out-of-court contacts between a court appointed representative of a child and the child.

protection and the well-being of children who have been abused or neglected (Section 104). Research may focus on a wide range of issues including: the nature and scope of child abuse and neglect; causes, prevention, assessment, identification, treatment, cultural and socioeconomic distinctions and consequences of child abuse and neglect; the incidence of substantiated and unsubstantiated abuse and neglect reports; the number of substantiated cases that lead to a judicial finding of abuse or neglect or criminal conviction; the extent to which unsubstantiated or false reports hamper the ability of states to respond to serious cases; the extent to which inadequate resources and training hamper states in responding to serious cases; the number of unsubstantiated, unfounded or false reports that result in a child's placement in substitute care; the extent to which unsubstantiated cases return as more serious cases of abuse or neglect; child abuse and neglect in substitute care; and abuse allegations made in the context of divorce, custody or other family court proceedings.⁸

CAPTA also authorizes the Secretary to conduct time-limited demonstrations, including: training for professional and paraprofessional staff; recruitment and training of volunteers; resource centers to provide information and training related to child abuse and neglect; triage systems for screening and assessing abuse and neglect reports; kinship care using adult relatives as preferred placements for children removed from home (in no more than 10 states); and supervised visitation centers in cases where domestic violence causes ongoing risk to a parent or child (Section 105). These demonstrations must be evaluated.

State Grants for Prevention and Treatment

Also under Title I, CAPTA authorizes formula grants to help states support their child protective services systems (Section 106). To receive these Basic State Grants, which are awarded on the basis of population under age 18, states are required to submit a plan to HHS every 5 years, and to inform HHS whenever they make significant changes in their programs. These plans must be coordinated with child welfare services plans prepared under Title IV-B of the Social Security Act, and must describe how states intend to use their funds.⁹ In their plans, states must certify that their programs include the following:

- ! procedures for reporting known or suspected cases of child abuse or neglect, for investigating such cases, and for taking immediate steps to protect children who might be in danger;
- ! immunity from prosecution for individuals who make good faith reports of suspected abuse or neglect;
- ! methods to preserve confidentiality of records and to allow disclosure only to specified individuals and entities;

⁸ For reports on federally funded child abuse and neglect research (the most recent is for FY1998) go to: [<http://www.calib.com/nccanch/catalog/granprog.cfm>].

⁹ In practice, HHS requires a consolidated 5-year plan from the states for their programs under CAPTA, Title IV-B of the Social Security Act (Child Welfare Services and Promoting Safe and Stable Families), and the Chafee Foster Care Independence Program along with mandatory annual progress and services reports.

- ! procedures for public disclosure of information about cases of abuse or neglect that result in a child's death or near-death;
- ! cooperation with law enforcement officials, courts, and human service agencies;
- ! prompt expungement of records in cases found to be false or unsubstantiated;
- ! appointment of a guardian *ad litem*, who may be an attorney or a court-appointed special advocate (CASA), to represent children in judicial proceedings;
- ! procedures for expedited termination of parental rights in any case of an abandoned infant, and procedures for individuals to appeal an official finding of abuse or neglect;
- ! assurance that the state does not require family reunification for a surviving child with a parent who has committed murder or voluntary manslaughter of another of their children, or aided or abetted in such murder or manslaughter, or committed a felony assault that resulted in serious bodily injury to any of their children;
- ! assurance that conviction of any of the felonies listed above will constitute grounds for termination of parental rights under state law; and
- ! procedures for responding to medical neglect, including prompt notification of cases of suspected medical neglect and authority (under state law) for the child protective services system to pursue legal remedies to prevent the withholding of medical treatment from disabled infants with life-threatening conditions.

State plans also must describe services to be provided to prevent the occurrence of child abuse and neglect; describe training that will be provided to agency personnel and mandated reporters of abuse or neglect; and provide that activities funded under Title IV-B of the Social Security Act comply with CAPTA eligibility requirements.

In addition, as a result of the 1996 amendments, CAPTA requires that states establish citizen review panels, composed of volunteer community representatives, to evaluate state and local child protection activities. States must designate at least three panels, which can include previously existing entities such as child fatality or foster care review teams.¹⁰ The panels must assess the effectiveness of state and local programs in accordance with state plan requirements and child protection standards or any other criteria considered important, including the extent to which child protective services are coordinated with foster care and adoption assistance. These panels also may review child deaths or near-deaths. States must provide panels with access to information and staff assistance if requested, although panel members and staff may not disclose any identifying information about individual cases or other unauthorized information.

Finally, as noted earlier, states receiving CAPTA grants must submit – to the “maximum extent practicable” – annual data to HHS on the number of reports of

¹⁰ The law allows states that received less than \$175,000 under the Community-Based Family Resource and Support Services program in FY1997 to establish only one citizen review panel; however, no states qualified for this provision.

child abuse or neglect; the number of reports that are substantiated, unsubstantiated, or found to be false; the number of children that receive or do not receive services; the number of children that die as a result of abuse or neglect, including in foster care; the number of caseworkers responsible for intake and screening; the agency response time in investigating reports of abuse or neglect, and in providing services to families after reports of abuse or neglect; the number of caseworkers responsible for intake, assessment and investigation relative to the number of reports investigated; the number of children who are reported for abuse or neglect, or are killed, after being reunited with their families or receiving family preservation services; the number of children receiving court-appointed advocates and the average number of out-of-court contacts between the child and his/her court advocate. The HHS Secretary is required to issue an annual report on the data received from states.

Grants to Improve Investigation and Prosecution

In consultation with the Attorney General, the Secretary of HHS is authorized to make grants to states to help them improve their child protection programs in the following areas:

- ! handling of child abuse and neglect cases, particularly cases of sexual abuse or exploitation, so as to limit additional trauma to the child victim;
- ! handling cases of suspected child abuse or neglect-related deaths; and
- ! investigation and prosecution of child abuse and neglect, especially cases of sexual abuse or exploitation (Section 107).

To receive these funds, referred to as Children's Justice Act grants, states must comply with the requirements for prevention and treatment grants (described above), and must have a state multi-disciplinary task force on children's justice, comprised of individuals who are knowledgeable about the criminal justice system and child abuse and neglect. The task force must conduct a comprehensive study every three years on civil and criminal handling of child abuse and neglect cases and make policy and training recommendations to the state.

Unlike the rest of CAPTA, this grant program is not funded through general revenues. The Children's Justice and Assistance Act of 1986 (P.L. 99-401) initially reserved \$10 million for these grants from the Crime Victims' Fund (which is administered by the Department of Justice and consists of fines and penalties paid by individuals convicted of federal crimes). In 2000, the Child Abuse Prevention and Enforcement Act (P.L. 106-177) increased the amount of funds that could be used for this program to \$20 million. Of total funds available, 15% is set-aside for Indian tribes and the remainder is allocated among states. Each eligible state receives \$50,000, plus an allocation based on the state's population of children under age 18. The Native American component of this program is administered solely by the Justice Department.

Community-Based Family Resource and Support Grants

Title II of CAPTA authorizes a grant program to help establish and operate statewide networks of community-based, prevention-focused, family resource and support programs that coordinate a wide variety of resources within each state.

To receive funds, states must designate a lead entity to oversee the statewide network, which can be an existing public, quasi-public, or private nonprofit agency. States must submit an application to HHS that describes the lead entity, includes an inventory of family resource and support programs in the state and a description of unmet needs, and contains a budget of which at least 20% comes from nonfederal cash resources. Funds are awarded to states according to a two-part formula: 70% based on a state's under-18-years-of-age population; and 30% based on the amount of nonfederal funds raised by the state for administration by the lead entity (compared to money raised in other states). Of funds appropriated under this title, 1% is initially reserved for grants to Indian tribes and tribal organizations and migrant programs.

Local programs in the statewide network must provide certain "core" services directly, such as parent education, outreach, referral and followup. Other core services, including respite care, must be provided through contracts or arrangements with other local agencies. Programs must provide access to "optional" services, such as adoption counseling, child care, services for families with disabled children, referral to job readiness and educational services, self-sufficiency and life management training, community referral services, and peer counseling. Local programs must involve parents in their operations, show leadership in mobilizing other resources, and participate with other grantees of the statewide network.

The law also authorizes HHS to support state-level participation in a national network for community-based family resource programs. In connection with this requirement, HHS funds a national resource center, referred to as FRIENDS.¹¹

Selected Changes Proposed in the 107th Congress

Each of the proposals to reauthorize CAPTA in the 107th Congress would have made changes aimed at strengthening efforts to prevent child abuse and neglect and promoting increased sharing of information, expertise, and resources between child protective service agencies and education, health, and juvenile justice systems. Each also would have extended program authority for CAPTA through FY2007 and would have granted increased funding authorization of CAPTA's programs. H.R. 5601, which was passed by the House in October 2002, contained parts of both the earlier House-passed CAPTA reauthorization (H.R. 3839) and the Senate-Committee-approved bill (S. 2998). The following discussion compares changes that would have been made by H.R. 5601 with those proposed in H.R. 3839 and S. 2998 and notes significant differences.

¹¹ See the FRIENDS web site at: [<http://www.friendsnrc.org/friends.htm>]

Increased Funding Authorized

P.L. 104-235 set total CAPTA funding at \$166 million in FY1997 and such sums as necessary for FY1998-FY2001. Both H.R. 3839 and H.R. 5601 would have increased CAPTA's total funding authorization level to \$200 million in FY2003 and such sums as necessary in each of FY2004-FY2007. S. 2998 would have increased CAPTA's total funding authorization to \$210 million. Each of the legislative proposals would have provided an FY2003 authorization amount of \$120 million to be allocated for Basic State Grants (to improve child protective services) and Discretionary Grants (for research and demonstration related to prevention and treatment of child maltreatment), and \$80 million for statewide networks of community-based child abuse and neglect prevention services. Additionally, S. 2998 provided an additional FY2003 authorization of \$10 million (such sums as necessary in following years) to fund a new demonstration grant program designed to help foster care youths and those aging out of foster care achieve independence.

(For more description of this S. 2998 proposal see below *Services to Current and Former Foster Care Youth*.)

New requirements linked to Basic State Grants

Assurances Added. To receive CAPTA's Basic State Grant—funds to improve child protective services—states are required to make certain assurances to the federal government. For instance, they must have in place a statewide law or program that provides for reporting of child abuse. (See full description of current assurances required in earlier section of this report, *State Grants for Prevention and Treatment*.) H.R. 5601 would have added seven new requirements. Three of these were included in both S. 2998 and H.R. 3839. These would have directed states to put in place provisions and procedures to—

- ! require CPS workers to advise an individual of the allegations made against him or her at their initial contact and to do so in a way consistent with laws that protect the rights of the informant;
- ! provide for improved training, retention and supervision of caseworkers.
- ! provide that law enforcement agencies and officials must be granted access to confidential information when needed to protect children from maltreatment. (This assurance is currently a subpart of an existing state requirement and the change would simply have elevated the substance of the current law provision to its own paragraph.)

A fourth proposed assurance concerned procedures for responding to the birth of an infant that is identified with prenatal drug exposure. S. 2998 and H.R. 3839 address this issue differently; H.R. 5601 follows S. 2998 with some modification. H.R. 3839 would have required health care providers involved in delivery of a drug-exposed infant to notify child protective services and required the state to have policies regarding developing of a safe plan of care for the infant (which might include services to the mother and/or referral for developmental assessment). In contrast, S. 2998 would simply have required the state to have policies and procedures in place to address the needs of drug-exposed infants, including

“appropriate” referrals to CPS. H.R. 5601 generally followed the language in S. 2998 except that it included explicit reference to development of a plan for the infant’s safe care. Under the H.R. 5601 proposal a state would have been required to assure it had in place “policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being physically affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure and requirements for the development of a safe care for the infant.”

Like S. 2998, H.R. 5601 would have also required states to make criminal background checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household¹² and it would have required the state to develop “triage procedures” for the appropriate referral of children “not at risk of imminent harm” to a community organization or for voluntary preventive services. Like H.R. 3839, H.R. 5601 would also have required states to have provisions addressing the training of CPS representatives regarding their legal duties, which might include procedures to inform them of their duties to protect the legal rights of children and families.

H.R. 3839 would separately have required a state to have provision for referral of child maltreatment victims under three years of age to the statewide early intervention program (for developmental assessment) operated under Part C of the Individuals with Disabilities Education Act. This proposed assurance was not included in S. 2998 or H.R. 5601.

(For more discussion of these proposed changes, see *Reauthorization Issues* below.)

Annual Data Report Items Expanded. Additionally, states that receive CAPTA state grants are now required to submit annual reports to HHS, including, to the “maximum extent practicable” specified data related to child maltreatment. Like, H.R. 3839, H.R. 5601 would direct states to add two items to this annual report: 1) the number of children under the care of the state child protective system that were transferred into the custody of the state juvenile justice system; and 2) a summary of citizen review panel activities. (This summary is required under current law but is not necessarily submitted to HHS.) S. 2998 would have only added the requirement that the state include a summary of the citizen review panel activities.

Citizen Review Panel Changes. States are currently required to appoint citizen review panels to oversee the policies and procedures of state and local CPS agencies. Each of the 107th Congress CAPTA reauthorization proposals (H.R. 3839, H.R. 5601 and S. 2998) would have required that citizen review panels also examine the “practices” of these agencies and would further have required that, as a part of their assessment of state and local child protective services, the panels do public outreach and allow for public comment.

¹² Under Title IV-E of the Social Security Act (Section 471(20)) a state is required to do criminal background checks for prospective foster and adoptive parents (unless the state has specifically opted out of this provision). This federal statute however does not address criminal background checks for other adults living in the foster or adoptive household.

As initially proposed in S. 2998, H.R. 5601 would also have required citizen review panels to incorporate recommendations for change in their currently required annual summary of activities report. Further, these proposals would have directed citizen review panels to submit this annual report to the “appropriate State agency” (current law requires they be made available to the public) and would obligate this agency to make a written response to state and local child protective services agencies describing whether or how the state would incorporate the recommendations to improve state and local child protection systems.

Federal Research and Technical Assistance Activities Modified

Under current law HHS is required to establish a national clearinghouse to maintain and disseminate child maltreatment information. The department is also required to coordinate certain child maltreatment resources and make available technical assistance. HHS is also required to conduct research on child abuse and neglect related topics and has the authority to make grants for related research and demonstration projects.

New Research and Assistance Activities Promoted. Like H.R. 3839, both S. 2998 and H.R. 5601 would have amended federal research and technical assistance duties to promote support for projects that track effects of changes over time (longitudinal studies), help improve judicial handling of child abuse and neglect cases (including enhanced collaboration between child protective and judicial systems), study the effects of child abuse and neglect on children’s development, identify successful early intervention or other services needed, and evaluate and publicize best practices to improve child protective services. S. 2998 and H.R. 5601 would also encourage research and training projects that foster links between the child protective and health care systems to better diagnose maltreatment and to identify services needed. All three of the proposals would have additionally called for training programs regarding legal duties of child protective services workers and best practices to promote collaboration of child protective service and health care workers with families.

Both S. 2998 and H.R. 5601 also added a number of suggested training programs or projects to improve the performance of supervisory and non-supervisory child welfare workers; enable state child welfare agencies to coordinate provision of services with health care, substance abuse treatment, mental health and other agencies; educate child protective services workers to recognize domestic abuse, neglect, or substance abuse, and improve services to disabled infants with life-threatening conditions. S. 2998 and H.R. 5601 would also have required HHS, through the National Clearinghouse on Child Abuse and Neglect, to provide for and disseminate information related to training resources for individuals who are, or will be, engaged in prevention, identification, and treatment of child abuse and neglect and to state and local officials to assist in training multi-disciplinary personnel in handling of child abuse and neglect cases. Separately S. 2998 and H.R. 5601 also called for the National Clearinghouse to provide technical assistance that may include evaluation or identification of ways to effectively handle child physical and sexual abuse cases, and to mitigate psychological trauma to child victims; both proposals

also suggested that HHS fund demonstration programs for school-based programs to prevent child sexual abuse.

Ability to Assist and Fund For-Profit Entities. With regard to provision of technical assistance or letting of grants/contracts for demonstration projects, S.2998 and H.R. 5601 generally would have allowed HHS to extend participation to include private agencies (as opposed to current law's *non-profit* private agencies); in addition states would have been more explicitly permitted to engage in certain demonstration projects.

New National Incidence Study. Each of the CAPTA proposals (H.R. 3839, H.R. 5601 and S. 2998) would have required HHS to fund a fourth National Incidence Study on Child Abuse and Neglect (NIS-4). Congress has on three previous occasions required this study, although, as the law is currently written, such a study is *optional*. The National Incidence Study may be designed to answer specific Congressional questions and it supplements and elaborates on annually reported state child maltreatment data by analyzing that information along with cases separately identified by community professionals, (which were not reported to or investigated by child welfare agencies).

H.R. 3839 would have specifically required NIS-4 to study the rate of child maltreatment by family structure, income and size, in addition to studying each of the current *optional* NIS research topics, including: the trend in the extent and severity of child maltreatment; rate and outcomes of abuse allegations in context of family court proceedings; rate and number of substantiated and unsubstantiated reports of child maltreatment; number of substantiated cases that result in a judicial finding of criminal wrongdoing; and extent to which unsubstantiated reports of child maltreatment result in out-of-home placement or contribute to a state's inability to respond to serious cases of maltreatment. H.R. 5601, which follows S. 2998, would have mandated NIS-4 to examine each of these topics but also would have required the study to look at the incidence of child abuse and neglect along a wide range of other personal and household demographic factors including age, sex, race, household relationship, school enrollment and education attainment, disability, grandparents as caregivers, and labor force status. In February the Administration signaled its desire to conduct a NIS-4 by requesting limited additional research money for FY2003.¹³ Data for the most recent National Incidence Study was collected in 1993 and 1994 and findings were released in 1996.

Other HHS Reports Mandated. As initially proposed in H.R. 3839, H.R. 5601 would also have required the HHS secretary to conduct a random sample study of the effectiveness of citizen review panels and to submit report findings to appropriate Congressional committees within 3 years of the proposal's enactment. (For other amendments related to Citizen Review Panels, see above, *Citizen Review Panel Changes*.) Finally H.R. 5601 would also have required the HHS secretary to prepare a report on state implementation of the CAPTA requirement that designated health care workers give prompt notification of cases of suspected medical neglect (including instances of withholding medically indicated treatment from disabled

¹³ See HHS Administration for Children and Families, FY2003 Budget Justifications.

infants with life-threatening conditions.) The report would have been due to Congress within 2 years of the proposal's enactment.

Advisory Board Option. H.R. 3839 would have repealed provisions of CAPTA that *permit* the HHS to appoint an Advisory Board on Child Abuse and Neglect. Both S. 2998 and H.R. 5601 would have left the current law option in place. Initially established as a mandatory function by the 1988 amendments to CAPTA (P.L. 100-294), the Advisory Board was generally charged with reviewing child abuse and neglect programs, providing recommendations for their improvement, and issuing an annual report of its efforts. (An Advisory Board report was issued in each year from 1990 through 1995.) The 1996 amendments to CAPTA (P.L. 104-235), gave the HHS secretary discretion concerning the appointment of an Advisory Board; no Board has been appointed since that time.

Services For Current and Former Foster Care Youth

S. 2998 would have authorized a new demonstration grant program (in up to 10 states) for provision of services to foster care youths, and those leaving public custody due to their age.¹⁴ Neither H.R. 3839 or H.R. 5601 included this proposal. Entities funded under this grant program would have been required to use at least 75% of the money they receive to develop “electronic opportunity passports, electronic cards or secure Internet databases that contain medical records, legal identification . . . and school transcripts” to ensure that foster care children and those leaving foster care for independent living can carry, or readily access, vital information. Demonstration funds under this proposal could also be used to provide individual development accounts for youth in foster care and those moving into independent living. S. 2998 would have provided a separate funding authorization for these demonstration projects of \$10 million for FY2003 and such sums as necessary for each subsequent fiscal year.

Other Changes

Renaming Community-Based Family Resource and Support Grants.

Under Title II of CAPTA federal funds are provided to each state for support of community-based services that are primarily intended to prevent child abuse and neglect. Each of the bills propose changing the names of grants now offered under Title II of CAPTA, which are now called “Community-Based Family Resource and Support Grants.” H.R. 3839 would have renamed them “Community-Based Family Support Grants for the Prevention of Child Abuse and Neglect; S. 2998 and H.R. 5601 would have renamed them “Community-Based Grants for the Prevention of Child Abuse and Neglect.”

Language Appropriate Services. Each of the proposals would have added “a sense of Congress” statement to the law calling on HHS to encourage all states and public or private groups that receive CAPTA funds to ensure that materials and

¹⁴ This proposal drew from S. 2657, which included other provisions and was introduced by Sen. Clinton in June 2002.

services are provided in an appropriate language when children and families with limited English proficiency are served.

GAO Study on Child Protective Service Workers. H.R. 5601 would have required the General Accounting Office (GAO) to “conduct a survey of a wide range of State and local child protection service systems to evaluate and submit to Congress a report concerning the cross training of child protective service workers and court personnel.” S. 2998 would have required a more expansive GAO study to evaluate current training of child protective service workers; analyze and evaluate the effects of caseloads, compensation, and supervision on staff retention and performance; look at efficiencies and effectiveness of agencies that provide cross-training with court personnel; and make recommendations to strengthen child protective services to improve child outcomes. Neither version of this proposal was included in H.R. 3839.

Related Programs and Changes Proposed

Both the Adoption Opportunities and Abandoned Infants Assistance are small grant programs with purposes related to those of CAPTA. These programs were created as independent Acts (in 1978 and 1988, respectively) but have traditionally been reauthorized at the same time as CAPTA.¹⁵ A description of these programs and proposed program and funding authorization changes follows. Like CAPTA, these programs are administered by HHS and are under the jurisdiction of the House Education and the Workforce and Senate Health, Education, Labor and Pensions committees.

The reauthorization granted for Adoption Opportunities and Abandoned Infants Assistance in 1996 (P.L. 104-235) expired in FY2001 but Congress provided FY2002 funding for both programs and their funding is continued for FY2003 via the continuing resolution (P.L. 107-294). Each of the reauthorization bills introduced in the 107th Congress (H.R. 3839, S. 2998 and H.R. 5601) would have extended the funding authorization for these programs through FY2007 and authorized increased funding for each of them.

Adoption Opportunities

Title II of the Child Abuse Prevention and Treatment and Reform Act of 1978, as amended (P.L. 95-266) authorizes the Adoption Opportunities Program. It is intended to eliminate barriers to adoption and to provide permanent homes for children who would benefit from adoption, particularly special needs children and disabled infants with life-threatening conditions. Currently the Adoption Opportunities Program requires HHS to establish a “centralized focus for planning and coordination of all departmental activities affecting adoption and foster care” and

¹⁵ H.R. 3839 would have amended CAPTA to incorporate these now independent programs as part of a new title of CAPTA. Neither S. 2998 nor H.R. 5601 proposed this change.

to undertake certain studies or make grants or contracts to other public or private nonprofit entities designed to promote the adoption of children through education, training, and publicity (including a national adoption information exchange, and a National Resource Center for Special Needs Adoptions), enhance recruitment efforts to identify adoptive parents (including special efforts to place minority foster care children in adoptive families and to identify minority adoptive families), and provide post-adoption services to families who adopt special needs children.

H.R. 3839 initially made limited substantive changes to this program and most of these were incorporated in S. 2998. That proposal also added new amendments, particularly with respect to interjurisdictional adoptions. With limited exceptions, H.R. 5601 followed the Senate-proposed changes.

Funding Authority Increased. Congress previously set the funding authorization for the Adoption Opportunities program at \$20 million for FY1997 and such sums as necessary for FY1998-FY2001 (P.L. 104-235). Each of the 107th proposals to extend funding authorization for the Adoption Opportunities program sought to increase the funding authority to \$40 million for FY2003 and such sums as necessary for FY2004-FY2007.

Attention to interjurisdictional barriers. As first proposed by S. 2998, H.R. 5601 would have explicitly added elimination of “geographic barriers” to the purposes of the Adoption Opportunities program. It would have required HHS to fund public or private entities (including states) for initiatives to eliminate barriers to placing children for adoption across jurisdictional lines. The purposes of this funding were to include—

- ! developing a uniform homestudy standard and protocol for acceptance of homestudies between states and jurisdictions;
- ! developing models of financing cross-jurisdictional placements;
- ! expanding capacity of all adoption exchanges to serve increasing numbers of children;
- ! developing training materials and training social workers on preparing and moving children across states lines; and
- ! developing and supporting models for networking among agencies, adoption exchanges and parent support groups across jurisdiction boundaries.

Within one year of the proposal’s enactment, H.R. 5601 (also as proposed by S. 2998) would additionally have required HHS (in consultation with GAO) to report recommendations for an action plan to facilitate the interjurisdictional adoption of foster children.

Adoption studies required. H.R. 5601 also incorporated the requirement that HHS conduct two additional studies that were separately proposed in the House and Senate. In keeping with its attention to interjurisdictional adoption issues, S. 2998 would have required HHS to study the nature, scope and effect of the interstate placement of children in adoptive homes by for-profit persons or agencies. It would also require HHS to report on how interstate placements are financed across state lines; make recommendations on best practice models for both interstate and intrastate adoptions; and to describe how state policies defining special needs

children separate or group similar categories of children. H.R. 3839 would have required HHS to conduct (or fund) research on adoption outcomes and factors affecting those outcomes and to report on its findings.

Other changes. Current law generally allows HHS to fund services provided by public and nonprofit private agencies only. H.R. 5601, following S. 2998, generally would have allowed HHS to include for-profit agencies among eligible grantees.

Each of the 107th Congress proposals to extend the Adoption Opportunities program would have added day treatment and respite care to the law's current list of suggested post-adoption services that may be funded. The current law list includes individual, group, or family counseling; case management; training of public or private agency personnel to provide post-adoption services; assistance to adoptive parent organizations; and assistance to support groups for adoptive parents, adopted children, and siblings of adopted children.

Abandoned Infants Assistance Act

The Abandoned Infants Assistance Act of 1988, as amended (P.L. 100-505) authorizes demonstration grants to public and private nonprofit agencies for activities such as preventing the abandonment of infants, identifying and addressing the needs of abandoned infants, recruiting and training foster families for abandoned children, providing residential care for infants and young children who cannot live with their families or be placed in foster care, providing respite care for families and foster families, and recruiting and training health and social services personnel to work with abandoned children. In selecting grantees, the HHS Secretary must give priority to applicants in states that have procedures for expedited termination of parental rights and adoptive placement for infants who are determined under state law to be abandoned. Each of the proposals offered in the 107th Congress (H.R. 3839, S. 2998 and H.R. 5601) would have made identical substantive changes to this Act.

Increased Funding Authority. Congress set the funding authorization for Abandoned Infants Assistance at \$35 million for FY1997 and such sums as necessary for FY1998-FY2001. Each of the proposals in the 107th Congress would have increased the program's funding authority to \$45 million for FY2003 and such sums as necessary for FY2004-FY2007.

Priority for Services Broadened. Under current law grantees must ensure that priority for their services is given to abandoned infants and young children who are HIV-infected, perinatally exposed to HIV, or perinatally drug-exposed. Each of the proposals in the 107th Congress would have maintained priority service for these children but would also broaden the priority category to include abandoned infants and young children who have "life threatening illness[es]" or "other special medical need[s]."

Studies Mandated. Each of the proposals would also have mandated that HHS conduct a study that 1) estimates the number of infants and young children who are relinquished, abandoned or found dead in the United States and the number of young children who are HIV positive, have a life-threatening illness or other special

medical need, or have been perinatally exposed to HIV or a dangerous drug; 2) estimates the annual number of infants and young children who are victims of homicide; 3) determines the characteristics of parents who have abandoned a child within a year of the child's birth; and 4) estimates the annual costs incurred by all levels of government to provide housing and care for abandoned infants and young children. The proposals would also have required HHS to report to Congress on their findings not later than 36 months after enactment of the legislation. Separately, HHS would be required to evaluate and report on effective intervention methods to prevent abandonment of children and effective ways of responding to the needs of abandoned children.

The Family Violence Prevention and Services Act

Administered by HHS, the Family Violence Prevention and Services Act (FVPSA) authorizes provision of funds to states, tribes and tribal organizations to assist in efforts to increase public awareness about family violence and to provide immediate shelter and related assistance to victims of family violence and their children. The 1984 amendments to CAPTA (P.L. 98-457) created the independent Family Violence and Prevention Services Act. The 1996 CAPTA amendments (P.L. 104-235) included amendments to this Act; more recently some parts of the Family Violence Prevention and Services Act were reauthorized, through FY2005 by the Violence Against Women Act of 2000 (P.L. 106-386).

Amendments to the Family Violence and Prevention Services Act are not included in H.R. 5601. However, both H.R. 3839 and S. 2998 would have extended authorization for various FVPSA programs through FY2007. S. 2998 would have made additional substantive changes by adding provisions designed to enhance the National Domestic Violence Hotline and by authorizing new support and resources to children who are exposed to domestic violence. Further S. 2998 would have repealed three currently authorized programs.

National Domestic Violence Hotline Enhancement. S. 2998 would have authorized the creation of a highly secure and continuously updated website containing information on available shelter space and other services for victims of domestic violence.¹⁶ The secure website would have been available to hotline operators, as well as domestic violence agencies and shelters and was intended to enable them to quickly and easily locate available and appropriate services for domestic violence victims and their families. S. 2998 sought to authorize \$5 million for this purpose in FY2003 and such sums as necessary in FY2004 through FY2007. HHS would have been required to annually evaluate the project and to submit a report on the evaluation to Congress.

Services for Children Exposed to Domestic Violence. S. 2998 would have created a new program under the Family Violence Prevention Services Act intended to reduce the negative impact of exposure to domestic violence in the lives

¹⁶ This proposal drew from S. 2002, which was introduced by Senator Wellstone in March 2002.

of children and youth¹⁷. The Senate proposal would have authorized HHS to make grants on a competitive basis for 1) direct services for children exposed to domestic violence. (These services were required to include counseling, appropriate services, or advocacy for these children and may have included other kinds of services); 2) training and collaboration among child welfare agencies domestic violence victim service providers, courts, law enforcement and other entities; and 3) multi-system interventions for children exposed to domestic violence. S. 2998 sought to authorize appropriations of \$20 million for each of FY2003 through FY2007 for this purpose. It further would have stipulated that, of the amount appropriated, HHS must not award less than 33% for programs providing direct services to children exposed to domestic violence, not less than 10% to Indian tribes, and no more than 3% for monitoring and evaluation.

Program Authorizations Extended or Renewed. Both H.R. 3839 and S. 2998 would have extended the basic family violence prevention program at the current \$175 million funding authorization (currently set to expire in FY2005) through FY2007 and both would have stipulated that of the amount appropriated not less than 10% must be made available to State Domestic Violence Coalitions. (S. 2998 further added that HHS must not use more than 2% of these funds for evaluation and monitoring.) Both proposals also continued authorization of \$6 million annually for community initiatives to coordinate intervention and prevention of domestic violence and both renewed the expired funding authorization for Transitional Housing Assistance at \$25 million in each of FY2003 through FY2007. The bills differed in their funding level authorization for the National Domestic Violence Hotline. The Hotline is currently authorized to receive \$2 million in each fiscal year through FY2005. S. 2998 proposed to raise this annual authorization to \$5 million while the House-passed bill retains the current \$2 million funding, however both proposals would have extended the Hotline's authorization through FY2007.

Programs repealed. S. 2998 also proposed to repeal the authorization for three programs: the Family Member Abuse and Documentation Project, Model State Leadership Grants and the Youth Education and Domestic Violence Program.

Other changes. Current law stipulates that states receiving demonstration grant funds may use not more than 5% of these funds for administrative costs. Both H.R. 3839 and S. 2998 would require states to report on the administrative costs associated with a state demonstration once a project has been completed. Both proposals also would have allowed grants for the National Domestic Violence Hotline to extend beyond 5 years – if the grantee prepared and submitted to HHS a report evaluating the effectiveness of funds received. S. 2998 also would have allowed HHS to appoint more than one employee to carry out the provisions of the Family Violence Prevention and Services Act.

¹⁷ This proposal drew from S. 1483, which included other provisions and was introduced by Senator Wellstone in October 2001.

Other Programs

As a part of the 1996 law amending CAPTA several additional programs, related more broadly to child protection were amended and/or reauthorized. These programs were Missing Children's Assistance and Children's Advocacy Centers (and related training/technical assistance for prosecutors of child abuse cases).

The **Missing Children's Assistance Act**, which funds the National Center for Missing and Exploited Children, was subsequently reauthorized through FY2003 by P.L. 106-71.¹⁸ **Children's Advocacy Centers**, first authorized under the Victims of Child Abuse Act of 1990,¹⁹ are intended to provide a multidisciplinary approach to preventing, investigating, and prosecuting child sexual abuse. The program authorization for these centers expired with FY2000 but Congress has continued funding them (along with related training for child abuse prosecutors). The proposals discussed in this report (H.R. 3839, S. 2998, and H.R. 5601) did not address reauthorization of either of these programs.²⁰

CAPTA Reauthorization Issues

CAPTA has a modest appropriation level and the reauthorization debate again raised questions about funding levels for the *prevention* of child maltreatment compared to funding for other child welfare services. Further, proposed new state requirements related to policies for addressing the needs of drug-exposed infants and raising the issue of parental rights proved controversial. Alone among the legislation offered, H.R. 3839 proposed requiring states to address possible developmental delays among young child maltreatment victims. This proposal follows in the CAPTA tradition of seeking to link existing resources and expertise to benefit abused children or those at risk of maltreatment and could significantly expand the population states serve under Part C of the Individuals with Disabilities Education Act. Finally, Congress has conducted little oversight of the 1996 changes it made to CAPTA and many of the initiatives did not have mechanisms that allowed for easy evaluation.

¹⁸ See CRS Report RS21365, *The Missing, Exploited, and Runaway Children Protection Act: Appropriations and Reauthorization*, by Edith Fairman Cooper.

¹⁹ Title II of the Crime Control Act of 1990, P.L. 101-647, as amended

²⁰ The 1995 Senate Labor and Human Resources Committee report (S.Rept. 104-117), that accompanied its CAPTA amendments (S 919), states that a two-year reauthorization of the Missing Children's Assistance and Children's Advocacy Centers was granted "at the request of the Judiciary Committee." It further stated the "intent of the Judiciary Committee to look at these two programs. . . within the context of the reauthorization of the Juvenile Justice and Delinquency Prevention Act." As finally passed P.L. 104-235 extended both programs for four years instead of two. The Juvenile Justice and Delinquency Prevention Act expired in 1996. It has not subsequently been reauthorized. The Victims of Child Abuse Act also authorizes court appointed special advocates for child abuse victims, training of judges, and televised testimony for children. These parts of the 1990 law were reauthorized (through FY2005), along with the 2000 Violence Against Women Act (Title II, P.L. 103-386).

Adequacy of Funding

A recurring concern about federal child welfare policy is the significant amount of federal funds that are provided to states for foster and adopted children – *after* they have been removed from their biological families – and the relatively small amount of federal resources for programs to prevent or treat child abuse and neglect, *before* children must be removed from home. In FY2001, federal expenditures for foster care and adoption assistance under Title IV-E of the Social Security Act were estimated at \$5.7 billion, while federal appropriations provided to states and dedicated for child abuse prevention and treatment (including investigations, prosecution and related administration) were considerably less. See **Table 1**.

Programs funded under Title IV-B of the Social Security Act are the largest dedicated source of federal child welfare funds (outside of those designated for foster care or adoption). In 1993 Congress created Subpart 2 of Title IV-B of the Social Security Act, (now called the Promoting Safe and Stable Families Program). Funds provided to states under the Safe and Stable Families program (FY2002 appropriation: \$375 million) must be spent on each of four defined service categories: family preservation, family support, time-limited reunification, and adoption promotion and support. Services provided as family support most closely match the kind of child abuse prevention programs funded under CAPTA's Community-Based Family Resource and Support Grants. Congress recently reauthorized the Promoting Safe and Stable Families Program (through FY2006) and added a discretionary funding authorization to a previously established level of mandatory funding.²¹ Title IV-B Subpart 1 of the Social Security Act, Child Welfare Services, received \$292 million in discretionary FY2002 funding. This program is generally considered available for services other than foster care but states may, and do, expend some of these program funds for out-of-home placements.²²

In addition to programs that are specifically designed to fund child welfare, states use a variety of federal funds that have more general or other purposes but can be applied to child welfare costs. The largest sources of these non-traditional funds are the Social Services Block Grant, the Temporary Assistance to Needy Families (TANF) block grant and Medicaid. According to an Urban Institute survey of state expenditures in SFY2000 some 42% of federal funds expended for child welfare purposes came from these non-dedicated sources.²³ The same survey found that out of the \$20 billion in state and federal funds spent on child welfare in SFY2000 only

²¹ For more information on this program see CRS Report RL30894 *Child Welfare: The Promoting Safe and Stable Families Program*.

²² Roseanna Bess, Jacob Leos-Urbel and Rob Geen, *The Cost of Protecting Vulnerable Children II: What Has Changed Since 1996?*, Occasional Paper No. 46, Assessing the New Federalism, Urban Institute, Washington, D.C., February 2001, 12-18.

²³ Caring for Children, Brief No. 1, "The Cost of Protecting Vulnerable Children, Urban Institute, Washington, D.C., November 2002. These percentages were derived from data reported by 39 states and covered \$7.8 billion in federal funds spent for child welfare. SSBG funding (including transferred TANF dollars) supplied 17% of the funds; TANF funding separately provided The single largest funding source (48%) was Title IV-E of the Social Security Act.

about \$2.9 billion was spent to maintain children in their home, investigate reports of abuse and neglect, and to finance other support services; by contrast some \$9.1 billion was spent on out-of-home placements; \$1.9 billion went to adoption-related activities; and at least \$1.8 billion was spent on administration.²⁴ Most child welfare funding, including all of the programs named thus far in this paragraph, are administered by HHS. A small amount of child-abuse-related funds, primarily dealing with judicial proceedings, are authorized by the Victims of Child Abuse Act (Title II of P.L. 101-647) and are administered by the Department of Justice. (See **Table 1**.)²⁵

The authorization for CAPTA funding is smaller than the Social Security Act programs, and is entirely discretionary. In 1996, Congress authorized a total of \$166 million in CAPTA funding for FY1997 and such sums as necessary for FY1998-FY2001. Adjusted for inflation, the FY1997 authorization would equal \$191 million by 2003. H.R.3839 proposes raising the FY2003 funding authorization to \$200 million and sets FY2004-FY2007 funding levels at such sums as necessary.

CAPTA funding has traditionally fallen below its authorized level. Basic State Grants and Discretionary Grants were authorized at \$100 million in FY1997 and such sums as necessary in FY1998-FY2001. Together these grants received a high of \$54.7 million in FY2001 and were funded in FY2002 at \$48.2 million. Grants to support statewide networks of community-based child abuse and neglect prevention services were authorized at \$66 million in FY1997 and such sums as necessary for FY1998-FY2001. This grant program received a high of \$33.4 million for FY2002.

The issue of the adequacy of funding for preventive services could also arise in the larger context of child welfare financing reform. Debate began in the 106th Congress on proposals to streamline the current array of child welfare programs, and to enable states to use federal funds more flexibly so that some of the resources currently provided for foster care under Title IV-E of the Social Security Act could be used for prevention and treatment and other support services for children and families. It is unclear whether this debate will have implications for the structure or funding of CAPTA.²⁶

²⁴ Ibid. These expenditures are based on reporting from all states, although not every state could provide all the data requested.

²⁵ In addition some groups that provide child abuse prevention activities, including family support and other services, have received funding via earmarks of separate program money administered by the Office of Justice Programs at the Department of Justice. Finally, the Centers for Disease Control (a part of HHS) has in recent years received a small amount of funds to support research related to child maltreatment.

²⁶ For more discussion of this issue see CRS Report RS31082 *Child Welfare Financing: Issues and Options*.

**Table 1. Appropriations for CAPTA and Selected Programs,
FY1999-FY2002**
(in millions of dollars)

<i>Child Abuse Prevention and Treatment Act</i>	FY1999	FY2000	FY2001	FY2002
Basic State Grants	\$21.0	\$21.0	\$21.0	\$22.0
Discretionary Grants (for research and demonstration)	14.1	18.6	33.7	26.2
Community-Based Family Resource and Support Grants	32.8	32.8	32.8	33.4
Children's Justice Act Grants	10 ^a	10 ^a	20 ^a	20 ^a
<i>Related Programs (traditionally reauthorized with CAPTA)</i>				
Adoption Opportunities	24.9	27.4	27.4	27.4
Abandoned Infants Assistance	12.2	12.2	12.2	12.2
<i>Social Security Act^b</i>				
Child Welfare Services Title IV-B, Subpart 1	292	292	292	292
Promoting Safe and Stable Families Title IV-B Subpart 2	275	295	305	375
Child Welfare Training, Section 429	7.0	7.0	7.0	7.5
<i>Victims of Child Abuse Act (administered by the Department of Justice)^c</i>				
Children's Advocacy Centers	5.5	5.5	7.0	7.0
Training for Prosecutors	1.5	1.5	1.5	1.5
Court-Appointed Special Advocates	9.0 ^d	10.0 ^d	11.5	12.0
Training for Judges	2.0 ^d	2.0 ^d	2.0	2.3
Grants for televised testimony of child abuse victims	1.0 ^d	1.0 ^d	1.0	1.0

Source: Table prepared by the Congressional Research Service. (Unless otherwise noted programs are administered by the Department of Health and Human Services)

^a These funds are not appropriated out of general revenues, but are reserved for this purpose from the Crime Victims' Fund, administered by the Department of Justice.

^b The authorization of funds for these programs is broader than child abuse related programs, however, states use portions of these funds for services related to child abuse and neglect.

^c The Victims of Child Abuse Act was enacted in 1990 as part of the much larger Crime Control Act (P.L. 101-647). The Court-Appointed Special Advocate, Training for Judges, and Grants for televised testimony have been reauthorized along with the Violence Against Women Act in 1996 and 2000. Authorization for Children's Advocacy Centers and Training for Prosecutors was last extended by the CAPTA amendments of 1996 (P.L. 104-235) and expired in FY2000.

^d This money was appropriated by Congress out of the Violent Crime Trust Reduction Fund.

New Federal Requirements Proposed

States continue to bear the largest responsibility for crafting child welfare policy. However the federal government establishes certain standards and requirements that are linked to the money it provides states for child welfare services. To receive money under the Basic State Grants provision of CAPTA the law requires states to “assure” HHS that it has certain statewide programs or policies in place. For instance, a state must have established child abuse and neglect reporting policies and procedures. The 107th Congress proposed to add several new assurances. These included policies to address the needs of drug-exposed infants, ensuring parents or others accused of child maltreatment prompt knowledge of the specific allegation, improving training for caseworkers, and encouraging identification of and treatment for developmental delays among the youngest child maltreatment victims.

Reporting Drug-Exposed Infants. H.R. 3839 would have required states to have “policies and procedures” in place that mandate health care providers “notify the child protective services system” (CPS) when a newborn is identified as drug-exposed.²⁷ The bill further provided that a state’s policy and procedure include “development of a safe plan of care for the infant under which consideration may be given to providing the mother with [substance abuse prevention and treatment counseling and health, mental health, social, and parenting services].” S. 2998 significantly modified this assurance by simply requiring states to have policies to address the needs of drug-exposed infants; this would have given states broad discretion to decide what kind of policy to adopt – including whether it should mandate that health care providers report such infants to CPS. H.R. 5601 largely followed the S. 2998 language although it made explicit the requirement that addressing the needs of a drug-exposed infant included development of a safe plan of care.

Language requiring health professionals to notify the CPS when a drug-exposed infant is born was introduced by Rep. Greenwood at the March 6, 2002 subcommittee mark-up of H.R. 3839. He explained the measure as a way to prevent future child maltreatment and identify families in need of services (particularly at a time when the birth experience might encourage a mother to be most amenable to intervention). He further asserted that this early intervention would be less costly than waiting for a child to experience abuse or neglect due to a parent’s substance abuse problem. Finally, he argued that while encouraging collaboration between the health care and

²⁷ H.R. 3839 described drug-exposed infants as those “born and identified with fetal alcohol effects, fetal alcohol syndrome, neonatal intoxication or withdrawal syndrome, or neonatal physical or neurological harm resulting from prenatal drug exposure.” S. 2998 (followed by H.R. 5601) provided a more narrow description: “infants born and identified with illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.” S.Rept. 107-292 accompanying S. 2998 notes that “because of limited ability to detect and diagnose it” the committee “felt constrained . . . not to include prenatal exposure to alcohol” in this requirement. The report adds, however that the Committee is “concerned about the affects of alcohol on infants and possible later diagnosis of fetal alcohol syndrome.”

child welfare systems was fine, the clear language of the bill—*requiring* the health care professional to act—was necessary to ensure the desired effect.²⁸

According to the committee report accompanying H.R. 3839: “The goal of this language [related to drug-exposed babies] is to identify infants at risk of child abuse and neglect so that appropriate services can be delivered to the infant and mother to provide for the safety of the child.”²⁹ A 1994 study by the National Institute on Drug Abuse (NIDA) suggests that up to 221,000 children born each year have been prenatally exposed to illegal drugs and that prenatal exposure to alcohol is far more common.³⁰ Abuse of drugs and alcohol during pregnancy is considered a public health concern by many, but for a variety of reasons, including lack of funds and liability concerns, there are few substance abuse treatment services available for pregnant women.³¹ The effects of prenatal exposure to drug or alcohol exposure can be difficult to separate from other factors that affect the well-being of a newborn (such as poor maternal health and/or nutrition, and lack of prenatal care) and effects vary by the kind and severity of exposure. However, research indicates that prenatal exposure to drugs or alcohol may cause physical, mental, and social problems for newborns. Some studies also suggest long-term problems for these children, including “deficits in the ability to habituate or self-regulate” and lowered IQ.³² Further having a parent who abuses drugs and/or alcohol significantly increases a child’s risk of abuse or neglect and substance abuse is frequently identified as a reason children are removed from their homes and placed in foster care.³³

²⁸ A 1995 survey of physicians, which categorized their responses based on the presence and kind of state policy related to prenatal drug exposure and child maltreatment, found that many physicians did not know their state’s policy. However, physicians in states with a clearly articulated policy that mandated reporting of drug-exposed newborns were the least likely to indicate they didn’t know the policy, while physicians in states that required *some* response to prenatal drug exposure (short of mandated reporting) were only “marginally” more aware of these state policies than were physicians in states that had no policy regarding prenatal drug exposure. Gail L. Zellman, et.al., “Influencing Physician Response to Prenatal Substance Exposure through State Legislation and Workplace Policies,” *Addiction* 92(1997)9: 1123-1131.

²⁹ H.Rept. 107-403, p. 27.

³⁰ The actual number of newborns who have been prenatally exposed to drugs or alcohol is difficult to determine and may be much larger. The number given here is cited in Abandoned Infants Assistance Resource Center, “Perinatal Substance Exposure,” AIA Fact Sheet, August 2000 [<http://socrates.berkeley.edu/~aiarc/pubs/perinate.pdf>]. For different measurement of prenatal exposure see Steven Ondersma, et.al., “Prenatal Drug Exposure and Social Policy: The Search for an Appropriate Response,” *Child Maltreatment* 5(May 2000)2: 93-108.

³¹ Jean Reith Schroedel and Pamela Fiber, “Punitive Versus Public Health Oriented Responses to Drug Use by Pregnant Women,” *Yale Journal of Health Policy, Law, and Ethics* 1(2001): 217-235. AIARC, “Perinatal Substance Exposure.”

³² Most studies deal with exposure to cocaine or alcohol. Exposure to other kinds of drugs, or to multiple drugs is less studied. See AIARC, “Perinatal Substance Exposure” and Ondersma, “Prenatal Drug Exposure and Social Policy.”

³³ Ondersma, “Prenatal Drug Exposure and Social Policy.” Richard Barth, “Research (continued...)”

The number of states that currently mandate health care professionals to report a drug-exposed infant to child protective services has been differently reported, with estimates ranging from about one-quarter to more than one-half of all states. A review of state statute information compiled by the National Clearinghouse on Child Abuse and Neglect Information indicates 19 states (including the District of Columbia) either directly mandate that health professionals report a newborn with prenatal exposure to drugs/alcohol, or define child abuse and neglect to include prenatal exposure to drugs/alcohol.³⁴ This review, however, likely undercounts the number of states with reporting policies because it primarily looks at statutes dealing with child welfare definitions and policies, not public health statutes (which may also include reporting requirements) and it does not look at state regulations related to drug-exposed babies.³⁵ Indeed a survey of state practice in 1994 reported that 27 states (including the District of Columbia) “require medical personnel to report drug-exposed babies.”³⁶

Critics of the proposal to mandate CPS notification when drug and alcohol exposed newborns are identified range across the political spectrum. Some are concerned by the scope of the federal requirement³⁷ or take issue with the bill’s failure to criminalize substance abuse during pregnancy. Alternatively, others may

³³ (...continued)

Outcomes of Prenatal Substance Exposure and the Need to Review Policies and Procedures Regarding Child Abuse Reporting,” *Child Welfare* 80(March/April 2001)275-296.

³⁴ House Report 107-403 accompanying H.R. 3839 states that 12 states have reporting procedures. This appears based on a count of state statutory language that specifically deals with reporting procedures. (See National Clearinghouse on Child Abuse and Neglect Information, “Child Abuse and Neglect State Statutes Elements, Reporting Laws: Number 8 “Special Reporting Procedures: Drug-Exposed Infants.”) However, because health care professionals are mandatory reporters of child maltreatment in all states, including prenatal drug exposure in the definition of child abuse and neglect is tantamount to a state directly requiring a report of prenatal drug exposure.

³⁵ See National Clearinghouse on Child Abuse and Neglect Information, “Child Abuse and Neglect State Statutes Elements, Reporting Laws: Number 1 “Definitions of Child Abuse and Neglect; Number 8 “Special Reporting Procedures: Drug-Exposed Infants.” Both compilations of statutes are given as “current through December 31, 2000,” however, Schroedel and Fiber, “Punitive Versus Public Health Oriented Responses,” identify several additional states with recent language or language in a separate part of state statutes that was not in the Clearinghouse review. States mandating physician reporting of drug exposure (some via definition of child abuse and neglect) as identified by review of the Clearinghouse data are Arizona, California, District of Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Virginia, and Wisconsin. Additional states noted in Schroedel and Fiber are Kansas, Missouri, and Nevada.

³⁶ David Wiese and Deborah Daro, “Current Trends in Child Abuse Reporting Fatalities: The Results of the 1994 Annual Fifty State Survey, Working Paper No. 808, The National Center on Child Abuse Prevention Research.

³⁷ The White House sought to soften this proposed requirement. Regarding H.R. 3839, the Office of Management and Budget noted it had “concerns with some of the bill’s provisions, including federalism concerns” with certain eligibility provisions tied to CAPTA’s Basic State Grants. <www.whitehouse.gov/omb/legislative/sap/107-2/HR3839-h.html>

be fearful of the bill's potential use in criminalizing substance abuse during pregnancy and believe it could create a disincentive for some pregnant women to seek prenatal services. Still others are concerned by the possible impact on the child welfare system, which would be required to investigate the need for removal of drug-exposed infants from their homes and to find foster care placements for those where removal is necessary. In addition, there are concerns about the effects of this reporting requirement given limited available social services, especially substance abuse treatment.

As passed by the House, H.R. 3839 maintained a state's right to define child abuse or neglect to include, or not include, prenatal exposure to drugs and alcohol.³⁸ It also stated that notification of prenatal drug exposure "shall not be construed to require prosecution for any illegal action." Again this is intended to preserve a state's prerogative to prosecute or not to prosecute.³⁹ According to the Committee report accompanying H.R. 3839, "the final language does not create any new or amended definition of child abuse. Neither is it the intent of this language to address any legal prosecution of mothers. . . the amendment does not preempt a state's law regarding what constitutes child abuse or requires prosecution."⁴⁰ While S. 2998 provided less explicit statutory language, the Committee report accompanying the legislation noted that the provision did not intend to "preempt State law regarding what constitutes child abuse or requirements for prosecution."⁴¹

Currently some states are unable to respond to all reports of abuse and neglect due to inadequate resources. Further an increased number of children needing out-of-home placements could tax the child welfare system's ability to find them foster care. During the crack epidemic of the middle 1980s through the early 1990s heightened attention to drug-exposure in some places led to increased reporting requirements for prenatal drug exposure and the foster care system struggled to keep up with the rapidly growing caseload. Finally, the lack of substance abuse treatment and related services is widely acknowledged.⁴²

³⁸ The bill states that "notification shall not be construed to create a definition under Federal law of what constitutes child abuse." See H.R. 3839, Section 105(b)(2)(B).

³⁹ States have tried a variety of ways to prosecute mothers who abused drugs during pregnancy. Although sometimes initially successful these cases have tended to run into roadblocks, including privacy issues and the lesser legal status of the fetus. Notably, during its 2000 term the U.S. Supreme Court ruled in *Ferguson v. City of Charleston* that urine samples taken without pregnant women's knowledge of their potential use for criminal prosecution were a violation of the Fourth Amendment's protection from "unreasonable search and seizures." See Schroedel and Fiber, "Punitive Versus Public Health Oriented Response to Drug Use by Pregnant Women," 218-220.

⁴⁰ H.Rept. 107-403, p. 27-28.

⁴¹ S.Rept. 107-292, p. 16.

⁴² Legislation introduced in the first session of the 107th Congress (S. 304, Senator Snowe and H.R. 1909, Representative Rangel) sought substantial child welfare funds for prevention and treatment of drug and alcohol abuse.

Addressing Parental Rights and Caseworker Training. Each of the CAPTA reauthorization proposals (H.R. 3839, S. 2998 and H.R. 5601) would have required that during their initial meeting, CPS workers inform the parent (or other caretaker) who is alleged to have abused a child of the nature of the allegations against them. Both H.R. 3839 and H.R. 5601 also would have required states to have provisions in place regarding training CPS workers on their legal duties (including the legal rights of children and families) and provisions and procedures to improve the training, retention and supervision of caseworkers. S. 2998 did not include this provision as an eligibility requirement for Basic State Grant funding but did recommend training of CPS workers on their legal responsibilities to protect the rights of children and families.

Child Protective Services agencies are sometimes criticized for acting too aggressively (unnecessarily removing children from their homes) or, alternatively, for failing to act as aggressively as they should (to remove children from unsafe homes). In particular, some critics of CPS argue that the anonymous reports of child maltreatment produce many baseless charges and that caseworkers frequently violate parental rights when investigating these cases by entering homes under false pretenses and needlessly harassing innocent parents and children. Social scientific research concerning these allegations has not been conducted, however anecdotal evidence is sometimes offered.⁴³ Other individuals argue that the current system strikes the proper balance between children's best interests and parents' rights, and that explicitly expanding parental rights may prevent the removal of children from unsafe homes. Some of these individuals also argue that CPS workers have insufficient training, casework supervision, and resources to effectively investigate abuse reports and argue that more training and support for these workers is needed.⁴⁴

Language included in H.R. 3839 (and subsequently in H.R. 5601), which concerned parental awareness of maltreatment allegations and training of CPS workers about their legal duties to both parents and children, was negotiated, and ultimately agreed upon, by Republicans and Democrats on the House Education and Workforce Committee. However, a large number of the committee's Democrats disagreed with aspects of the Committee Report (H.Rept. 107-403) characterization of the intent of this language and have signed on to an "Additional Minority Views" section.

The House Committee Report on H.R. 3839 states that a balance between parental rights and children's best interests was sought and that the legislation sought to support increased training for CPS workers regarding investigative procedures and the legal rights of parents and children, improved public education on child abuse

⁴³ See for instance Testimony of Christopher J. Klicka, Senior Counsel of the Home School Legal Defense Association, October 17, 2001 before the House Education and Workforce Subcommittee on Select Education.

⁴⁴ Some social scientific evidence of harassment experienced by CPS workers was collected in a 1993 survey of Montana CPS workers, and better training and guidance on investigation procedures were among the authors' recommendations. See Charles Horejsi, Cindy Gartwait, and Jim Rolando, "A Survey of Threats and Violence Directed Against Child Protection Workers in a Rural State," *Child Welfare* 73(March-April 1994)2:173-179.

reporting, new ability for individuals to register complaints regarding CPS practices (i.e., via the forum of Citizen Review Panels) and a requirement that caseworkers advise individuals under investigation of the specific child maltreatment allegations made against them.⁴⁵ Regarding disclosure of specific allegations the report additionally states “it is not the intent of the Committee that . . . such advisement be too descriptive as to inadvertently provide identifying information that may reveal the source of such allegation or complaint.” Concerning training of CPS personnel on their legal duties “to protect the constitutional and statutory rights of children and families,” the majority notes: “the Committee believes that child protective services personnel should understand that they don’t have the authority to demand entry in the family home when investigating an allegation.”⁴⁶

Eighteen House Education and Workforce Committee Democrats who signed the “Additional Minority Views” asserted that the views expressed in the report “go beyond the agreed upon intent of the relevant provisions. . . distort what is known about this issue, defy model professional practice, and could potentially detrimentally tip the balance [between parent’s rights and children’s interests] in a manner that would lead to greater harm to children.” In addition they stated that “the appropriate way” to address the concern of parental rights is “through more resources for training and case management of child protective service personnel rather than prescriptive declarations from the federal government about what caseworkers should or should not say in their investigations.”⁴⁷

The Senate HELP Committee report accompanying S. 2998 notes that while it remains “strongly committed to the main mission of the child protective services system – to ensure that child safety and the best interests of the child are protected, the Committee believes it is important for child protective services personnel to understand and respect Fourth amendment limitations on their right to enter a home when investigating an allegation without a court order.”⁴⁸

Evaluating Needs of Young Victims. H.R. 3839 would require a state to develop provisions and procedures to refer young child maltreatment victims (under three years of age) to the statewide network of assessment services provided by Part C of the Individuals with Disabilities Education Act (IDEA).⁴⁹ Neither S. 2998 nor H.R. 5601 proposed to include this new state requirement. Under Part C of IDEA states are allocated federal funds to establish a statewide system that identifies children at risk of developmental delays, assesses their developmental status (including physical, mental or social delays), and provides services to all children (and their families) who are found to have a “developmental delay” (as defined by

⁴⁵ H.Rept. 107-403, 25-26.

⁴⁶ Ibid.

⁴⁷ Ibid, 80-81.

⁴⁸ S.Rept. 107-292, 15.

⁴⁹ Language concerning referral of young maltreatment victims (including drug-exposed newborns) for an assessment of developmental delays and need for services was added to H.R. 3839 prior to the full committee mark-up of the bill on March 20 and was incorporated as a part of the subcommittee chairman’s “amendment in the nature of a substitute.”

the state). The program currently serves an estimated 250,000 children and its FY2002 appropriation is \$417 million.⁵⁰

Young children are the most likely to be victims of child abuse and neglect. In 2000 (the most current year data is available) more than 184,000 children under three years of age were found to be victims of child maltreatment.⁵¹ Child maltreatment can be physically or otherwise disabling. A recent review of new research on brain development indicates that the brain's structure can be altered by the experience of abuse and neglect and that this may result in long-term physical, cognitive, emotional and social growth issues.⁵²

The Committee report accompanying H.R. 3839 states that the requirement for states to develop referral policies related to young child abuse victims would ensure that these children have access to supports for which they may be eligible and that this "will help these children learn, grow and thus enter school ready to learn."⁵³ The "Additional Minority Views" section of the report expands on the need for these services and states that treatment of medical, developmental and mental health problems reduces the amount of time children spend in out-of-home placement, and increases their chances for stable living.⁵⁴

Oversight of Prior Amendments

Congress made extensive changes to CAPTA in 1996 and little oversight of those amendments has occurred. H.R. 5601, H.R. 3839 and S. 2998 include several provisions that would examine some of those changes.

The high incidence of unsubstantiated maltreatment cases was one focus of the 1996 amendments, which sought to encourage research on this topic. Current law gives HHS the option to conduct a fourth National Incidence Study (NIS-4) on Child Abuse and Neglect and directs that a number of questions related to unsubstantiated reports of child abuse or neglect be a part of the survey design. Each of the CAPTA reauthorization proposals in the 107th Congress would have mandated that a NIS-4 be conducted and that the study include the previously stated questions regarding unsubstantiated reports, including: "the incidence of substantiated and unsubstantiated reported child abuse cases," "the extent to which the number of unsubstantiated, unfounded and false reported cases of child abuse or neglect have contributed to the inability of a State to respond effectively to serious cases of child abuse or neglect;" "the number of unsubstantiated, false, or unfounded reports that have resulted in a child being placed in substitute care, and the duration of such

⁵⁰ See CRS Report RL31273 *Individuals with Disabilities Education Act (IDEA): Early Childhood Programs (Section 619 and Part C)*.

⁵¹ HHS, *Child Maltreatment 1999*, 27.

⁵² National Clearinghouse on Child Abuse and Neglect Information, "In Focus: Understanding the Effects of Maltreatment on Early Brain Development," October 2001. Available on the web at [www.calib.com/nccanch/pubs/focus/earlybrain.cfm]

⁵³ H.Rept. 107-403, 28.

⁵⁴ *Ibid.*, 81-82.

placement;” and “the extent to which unsubstantiated reports return as more serious cases of child abuse and neglect.” HHS would be required to report on the NIS-4 findings and to submit this report to the appropriate Congressional committees no later than 4 years after the enactment of H.R. 3839.

The 1996 amendments also required states to establish citizen review panels to evaluate the state’s effectiveness in carrying out its child protection responsibilities. These panels are required as a condition of receiving CAPTA funds but they have authority to review a state’s entire child welfare system, including foster care and adoption programs. Current law requires these panels to produce an annual summary of their activities. H.R. 3839, S. 2998 and H.R. 5601 would each have made this summary available to the federal government by requiring that it be included in the annual data report states must submit. In addition, H.R. 3839 and H.R. 5601 would require HHS to conduct a random sample survey of the effectiveness of citizen review panels and to report its findings to the appropriate Congressional committees no later than 3 years after the proposal’s enactment.

Other changes incorporated in the 1996 law remain largely unexamined. These include 1) provisions for expedited termination of parental rights in cases of infant abandonment and for specific egregious cases of criminal wrongdoing by a parent;⁵⁵ 2) a more narrow minimum definition of child abuse and neglect;⁵⁶ 3) procedures for responding to cases of medical neglect (including a religious exemption); 4) state assurance that every child involved in a judicial proceeding must have their own appointed court representative (i.e., guardian *ad litem*, attorney, and or a court-appointed special advocate); and 5) new confidentiality measures.

⁵⁵ The 1997 Adoption and Safe Families Act (P.L. 105-89) added similar language to the child welfare provisions of the Social Security Act and the newly implemented Child and Family Services Review System may provide HHS with some information on their use.

⁵⁶ States may define child maltreatment within the following CAPTA guideline: “Child abuse and neglect means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”

Action in the 107th Congress

On April 23, 2002 the House of Representatives passed H.R. 3839, the Keeping Children and Families Safe Act of 2000. The bill was passed under suspension of the rules by a vote of 411 to 5. On September 25, 2002 the Senate HELP Committee considered and adopted S. 2998 without amendment. Negotiations between Senate and House staff, which sought to reach a compromise between these bills achieved only partial agreement. However on October 10, 2002 the House, Education and Workforce Committee approved a revised House CAPTA reauthorization bill, H.R. 5601, and that same day the bill was approved by the full House (under unanimous consent). The full Senate did not consider H.R. 5601 prior to adjournment of the 107th Congress.

Mark-Up. The House Education and Workforce Committee approved H.R. 5601 on October 10 without amendment. At a March 20, 2002 mark-up, the House Education and Workforce Committee reported H.R. 3839 favorably (voice vote).⁵⁷ The legislation was introduced on March 5, 2002 by House Education and Workforce, Subcommittee on Select Education Chairman Hoekstra and was amended at the March 6 subcommittee mark-up (and again prior to its adoption by the full committee). The Select Education Subcommittee adopted three amendments (all by voice vote). These included: revised language related to informing parent/caretaker of maltreatment allegations (Representative Hoekstra); provisions concerning notification of CPS and development of a services plan when a newborn shows signs of prenatal exposure to drugs or alcohol (Representative Greenwood); and language stating the sense of the Congress that HHS should encourage entities funded under CAPTA to provide materials and services in the languages appropriate to clients who are not native speakers of English (Representative Davis).⁵⁸

The full committee eventually adopted an “amendment in the nature of a substitute” that was brought by Representative Hoekstra. It contained somewhat revised provisions related to policies and procedures for drug-exposed newborns and added language concerning referral to the Part C, IDEA program for young victims of child abuse and neglect.

⁵⁷ H.Rept. 107-403 accompanying this legislation was released April 11, 2002.

⁵⁸ The subcommittee gave its longest discussion to the Greenwood amendment regarding drug-exposed newborns, with Democrats raising a variety of concerns. Ranking Subcommittee Democrat Tim Roemer announced he would vote in its favor only after he asked and received verbal agreement from Representative Greenwood that some perfecting of the language would continue until the full committee mark-up. Representative Davis raised several issues, including liability for CPS agencies. Representative Scott suggested that CPS may not be the best referral and cited the Individuals with Disabilities Education Act (IDEA) as a possibility. He said the direction of the amendment however was good (especially staying away from criminalizing substance abuse by pregnant women) and that he supported it. Representative Holt noted that functioning of the amendment would be hard to gauge. He wanted to save consideration of this language for full committee mark-up and was not ready to support it at the time of the subcommittee meeting. Representative McCollum said she supported the amendment.

The Senate HELP committee approved S. 2998, without amendment, on September 25, 2002.

Hearings. No Senate HELP Committee hearings on CAPTA were held in the 107th Congress, however, the Select Committee on Education of the House Education and Workforce Committee held two hearings on CAPTA reauthorization prior to its mark-up of H.R. 3839. At its August 2, 2001 hearing on “CAPTA: Successes and Failures at Preventing Child Abuse and Neglect,” House Members heard from the Administration as well as academic, think tank, and child abuse prevention groups and received a range of views on the program. Child abuse and neglect was described variously as an important public health issue that requires concerted and coordinated attention and as a manifestation of declining cultural support for stable families headed by two parents.

HHS Assistant Secretary for Children and Families, Wade Horn, who testified at the August 2 hearing, stated that the Administration sought reauthorization of CAPTA, along with the Abandoned Infants Assistance Act, and Adoption Opportunities program, and that it would not request any significant legislative changes. Most witnesses at this hearing suggested the need to strengthen the child protective service infrastructure beginning at the level of the individual worker. Some called for increased funding, as a way to help accomplish this, and to preserve a separate federal funding stream focused on *prevention* of child abuse and neglect. Other witnesses doubted the efficacy of increased funds and/or suggested specific questions for research and evaluation of the program. These included: Is the definition of child abuse in CAPTA too broad and can a more evidence-based definition be used? Are there new technologies that can help the child welfare system better assess child maltreatment reports and risks? In what kinds of family structures does child maltreatment most often occur? Is mandatory reporting working and should its standard of anonymity be changed? Is CAPTA consistent with the goals and provisions of the 1997 Adoption and Safe Families Act?⁵⁹

At the October 17, 2001 hearing, “Prevention and Treatment of Child Abuse and Neglect: Policy Directions for the Future,” committee members heard witnesses from the academic, legal and service provider fields. Testimony given again suggested a strong consensus on the importance of funding for prevention. Most witnesses gave CAPTA high marks for its funding of prevention and training but pressed for more funds to expand these services.⁶⁰

Specific suggestions offered to amend CAPTA included: financing incentives designed to encourage public/private partnerships that promote child abuse awareness and prevention, reactivation of the National Advisory Board on Child Abuse, promotion of infant safe haven programs, support for creation of common goals across multiple organizations, funding for longitudinal research and evaluation (especially by allowing multiple year grants that enable a group to adjust its services

⁵⁹ To read testimony submitted for the August 2, 2001 hearing see:
[http://www.house.gov/ed_workforce/hearings/107th/sed/capta8201/w180201.htm].

⁶⁰ To read testimony submitted for the October 17, 2001 hearing see:
[<http://edworkforce.house.gov/hearings/107th/sed/capta101701/w1101701.htm>].

based on ongoing evaluation), funding of health-based model approaches for forensic diagnosis and comprehensive evaluation in child abuse cases, disallowing anonymous reporting of child abuse and mandating criminal penalties for knowingly offering a false report, and bolstering caregivers' constitutional due process and privacy rights by requiring social workers to both secure a probable cause warrant and inform a parent or caretaker of specific allegations before investigating a child abuse report.

In response to a direct question from Representative Davis, several witnesses supported the elimination of the religious exemption clause for medical neglect cases while another asked that it be maintained as an important safeguard of parent's religious freedom. Representative Tiberi, who chaired this hearing, questioned whether removal of anonymous reporting might not hinder reporting of actual abuse, and Representative Scott noted that where the well-being of children is involved, constitutional protections have been defined less stringently.

Funding. Although authorization for CAPTA expired on September 30, 2001, Congress approved \$81.6 million in FY2002 funding for three CAPTA programs (P.L. 107-116). This level of funding split the difference between the House-sought \$77.0 million in CAPTA funding and the Senate-proposed \$87.5 million. Most of the funding differences related to discretionary grants for research and demonstration projects. Money for this CAPTA component increased by \$15.2 million between FY2000 and FY2001, due to earmarks contained in the conference agreement.⁶¹ The President's FY2002 budget request of \$71.8 million for CAPTA, sought to reduce research and demonstration funding by the amount of the FY2001 conferee earmarks and maintained FY2001 funding for the other components.

For FY2003 the President's budget includes \$81.8 million for CAPTA. This is approximately \$200,000 above the amount Congress appropriated for the program in FY2002. The slight increase is requested by the Administration to implement a fourth National Incidence Survey of Child Abuse and Neglect. In July, the Senate Appropriations Committee approved S. 2766 (S.Rept. 107-216), which sought CAPTA funding levels identical to those proposed by the President. This bill died with the close of the 107th Congress, however, under the continuing resolution (P.L. 107-294) CAPTA is currently receiving FY2003 funding at the FY2002 level. For more details on proposed and final funding levels see **Table 2.**)

⁶¹ See conference report on P.L. 106-554, H.Rept. 106-1033, pages 157-158.

Table 2. FY2001 Funding, FY2002 Proposed and Final Funding, and FY2003 Budget Request for CAPTA and Selected Programs
(Appropriations in millions of dollars)

<i>Child Abuse Prevention and Treatment Act</i>	FY2001 funding	FY2002 Proposed and final funding				President's FY2003 budget request^a
		President's budget request	House	Senate	Final	
Basic State Grants	\$21.0	\$21.0	\$23.0	\$21.0	\$22.0	\$22.0
Discretionary Grants (for research and demonstration)	33.7	18.0	20.0	33.7	26.2	26.4 ^b
Community-Based Family Resource and Support Grants	32.8	32.8	34.0	32.8	33.4	33.4
Children's Justice Act Grants ^c	20	NA	NA	NA	20	NA
Related Programs						
Adoption Opportunities	27.4	27.4	27.4	27.4	27.4	27.4
Abandoned Infants Assistance	12.2	12.2	12.2	12.2	12.2	12.2
Other Selected Programs						
Child Welfare Services	292	292	292	292	292	292
Child Welfare Training	7.0	7.0	7.0	8.0	7.5	7.5
Promoting Safe and Stable Families	305	505	375	375	375	505
Children's Advocacy Centers	7.0	7.0	7.0	7.0	7.0	7.0
Training for Prosecutors	1.5	1.5	1.5	1.5	1.5	1.5

Source: Table prepared by the Congressional Research Service (CRS).

^a In July, the Senate Appropriations Committee (S. 2766, S.Rept. 107-216) recommended funding levels equal to the President's for each of the HHS-administered programs shown above. For Children's Advocacy Centers and Training for Prosecutors (the only non-HHS-administered programs listed) it recommended a total of \$11 million, all of which appears directed to Children's Advocacy Centers (S. 2778, S.Rept. 107-218).

^b HHS FY2003 budget justifications explain that this small increase in requested FY2003 funds would be used to implement the fourth National Incidence Study on Child Abuse and Neglect.

^c NA = not applicable. These funds are not appropriated from general revenues but are reserved for this use from the Crime Victims' Fund, which is administered by the Department of Justice.

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Specialist in Social Policy

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